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BLAKELY SOKOLOFF TAYLOR &
ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES CA 90025-1030

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OFFICE OF PETITIONS

In re Application of :
O'Connor et al. :
Application No. 09/976912 :
Filing or 371(c) Date: 05/14/2002 : **ON PETITION**
Attorney Docket Number: :
42390.P3674R :

This is a decision on the petition under 37 CFR 1.137(b), filed September 26, 2006, to revive the above-identified application. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

Applicant filed a Notice of Appeal on February 27, 2006, and thereafter timely filed an appeal brief on April 24, 2006. The appeal brief was non-compliant. Applicant was so notified in a Notice of Non-Compliant Appeal Brief (Notice), mailed May 5, 2006. The Notice set a one (1) month period for reply from the mail date of the Office action. Applicant filed an Appeal Brief in response to the Notice on June 7, 2006; however, the response was also noncompliant, and for the same reasons as the appeal brief filed April 24, 2006. Applicant was so notified in the Notice of Abandonment was mailed June 16, 2006. No timely and properly having been received, and no claims having been allowed, the appeal was dismissed and the application became abandoned on March 22, 2006¹.

¹ The MPEP, 1205.02, provides that the appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified.

The instant petition

Applicant files the instant petition and appeal brief. The Examiner has reviewed the appeal brief and found the brief compliant.

Applicable law

A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

As to (3), Applicant's appeal brief, filed June 7, 2006 in response to the Notice, was noncompliant for the same reasons as the appeal brief filed April 24, 2006. As such, there is a question as to whether the delay was unintentional. Applicant is required to provide information to substantiate the assertion that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to this paragraph, was unintentional, in view of the fact that the appeal brief filed in response to the Notice was noncompliant for the same reasons as the appeal brief filed April 24, 2006.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.



Derek L. Woods

Attorney
Office of Petitions